



Civil Resolution Tribunal

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Civil Resolution Tribunal

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B E T W E E N :

Yvonne Hebein, Greg Turgeon, Ken Pickles, Dave Stephen, Albert
Brissette, and Rosaleen McKenna

APPLICANTS

A N D :

The Owners, Strata Plan LMS 1549

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell

INTRODUCTION

1. The applicants, Yvonne Hebein, Greg Turgeon, Ken Pickles, Dave Stephen, Albert Brissette, and Rosaleen McKenna (owners) own separate strata lots in the respondent strata corporation, The Owners, Strata Plan LMS 1549 (strata).

2. The owners say the strata has violated sections 35 and 36 of the *Strata Property Act* (SPA), by refusing to provide requested financial documents. The owners seek an order for production of the documents.
3. The strata did not provide a direct response to the owners' claim for document disclosure, but says the owners' request is "an act of blatant defiance", and is related to previous disputes between the parties. The strata says the owners' claim is false, that the strata has complied with the SPA.
4. The group of owners is represented by one owner, Yvonne Hebein. The strata is represented by a strata council member.
5. For the reasons set out below, I find that the strata must disclose the financial documents set out in my order.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
8. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

9. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. The issue in this dispute is whether the owners are entitled to disclosure of financial documents.

EVIDENCE, FINDINGS AND ANALYSIS

11. I have read all of the evidence provided but refer only to evidence I find relevant to provide context for my decision.
12. The strata asserts that some of the owners are former members of strata council, and that these owners spent strata funds inappropriately in the past. That matter is not before me in this dispute, and the strata did not file a counterclaim. For that reason, I have not addressed these allegations.
13. The owners did not provide a clear list to the tribunal setting out which financial documents they seek to have disclosed. However, email correspondence from Ms. Hebein to the strata sets out the following requests:
- Monthly financial statements from January 2018 onwards
 - Bank statements January 2018 onwards
 - Copies of general detail ledger from August 2017 onwards
 - Copies of invoices paid by cheques 963, 968, 970, 972, and 973
14. Section 35 of the SPA and section 4.1 of the *Strata Property Regulation* (Regulation) identify records the strata must prepare and documents that it must retain. Section 35(1)(d) of the SPA specifically requires the strata to prepare “books of account showing money received and spent and the reason for the receipt or expenditure”. Sections 35(2)(k) and (l) require the strata to retain all

correspondence and bank statements. I find that the documents requested by the owners, as listed above, fit within these categories. However, in *Kayne v. LMS 2374*, 2007 BCSC 161051, the BC Supreme Court held that strata corporations are not required to disclose invoices.

15. I find the strata has not provided a clear explanation for its refusal to provide the requested documents to the owners. It submits that past strata councils did not provide financial statements monthly, and says it would be burdensome to provide such records if all 50 owners requested them. The strata also says that most owners in the strata prefer to have financial statements made available for inspection prior to council meetings. While that may be true, section 36 of the SPA provides that upon request, the strata corporation must make the records and documents listed in section 35 available for inspection and provide copies of them to an owner or other authorized person (emphasis added). Section 36(3) says that unless the request is for copies of bylaws or rules, the strata must provide the requested copies within 2 weeks.
16. The requirement in section 36 of the SPA to provide copies of documents upon request is not discretionary. Thus, while the strata provided evidence that it says shows that the owners acted improperly in the past, this does not entitle the strata to refuse a request for copies of any documents listed in section 35 of the SPA. For that reason, I place no weight on the strata's evidence about past events, including evidence about the owners' failure to attend a hearing on May 16, 2018. Also, while the strata says documents were made available for inspection, section 36(3) of the SPA says the strata corporation must provide copies upon request by an owner. This means that the strata does not have the option to provide documents for viewing instead of providing copies where requested. Although section 36(4) says it the strata can withhold documents until the copying fee allowed in the Regulation is paid, the strata did not ask for a copying fee, so this exception does not apply.
17. I note that the May 16, 2018 strata council meeting minutes indicate that the strata council created a rule that financial statements can be inspected with 2 weeks' notice, or 30 minutes before strata council meetings. This rule cannot and does not

override the requirements of section 36 of the SPA to provide copies of documents to owners upon request. The strata council cannot opt out of the SPA by enacting a rule. I also note that the rule did not appear to exist when Ms. Hebein made her request for documents in February 2018. Finally, unless ratified by the owners at the first general meeting following May 16, 2018, this rule would have no further force or effect.

18. For these reasons, I order the strata to provide Ms. Hebein with copies of the following documents:

- a. All monthly financial statements from January 1, 2018 until the date of this order
- b. All bank statements January 1, 2018 until the date of this order
- c. Copies of all general detail ledger entries from August 1, 2017 until the date of this order

19. As previously stated, the court in *Kayne* said that strata corporations are not required to disclose invoices. For this reason, I do not order disclosure of any invoices.

20. I leave it to Ms. Hebein to provide copies of the disclosed documents to the other applicant owners, as she made the original request in February 2018. Section 4.2 of the Regulation says that the strata may charge up to \$.25 per page for copies of requested documents. However, since the strata did not raise the matter of copying fees before or during this dispute, I find that Ms. Hebein is entitled to 1 set of copies of the documents set out above at no charge. It is open to the strata to charge for copies in response to future requests, up to the amount allowed in the Regulation.

TRIBUNAL FEES AND EXPENSES

21. Under section 49 of the Act, and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and dispute-related expenses. As the owners were successful in this dispute, I see no reason to depart from this general rule. I therefore order the strata to reimburse the owners \$225 for tribunal fees.
22. The strata requested reimbursement of \$840 for time spent in dealing with this dispute. As the strata was not successful, I decline to make this order. Also, I would not order this reimbursement in any event. The tribunal typically does not award a party expenses for their own time in dealing with a dispute, consistent with the tribunal's practice of not generally awarding legal fees.
23. The strata corporation must comply with the provisions in section 189.4 of the SPA, such as not charging dispute-related expenses against the owners, unless the tribunal orders otherwise (which I do not).

DECISION AND ORDERS

24. I order that within 14 days of this decision, the strata provide 1 set of printed copies of the following documents to Ms. Hebein:
 - a. All monthly financial statements prepared from January 1, 2018 until December 31, 2018
 - b. All bank statements received from January 1, 2018 until December 31, 2018
 - c. Copies of all general detail ledger entries made from August 1, 2017 until December 31, 2018
25. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has

not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

Kate Campbell, Tribunal Member